REMARKS

The Examiner has rejected Claims 1-14 and 21-23 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Such rejection is deemed avoided in view of the clarifications to the claims made hereinabove.

The Examiner has further rejected Claims 21-23 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Such rejection is deemed avoided in view of the clarifications to the claims made hereinabove.

The Examiner has still further rejected Claims 1, 4, 8, 14, 21, and 22 under 35 U.S.C. 102(e) as being anticipated by Gleichauf et al. (U.S. Patent No.: 6,301,668). Moreover, the Examiner has rejected Claims 2, 3, 15, 17, 18, and 20 under 35 U.S.C. 103(a) as being unpatentable over Gleichauf et al. (U.S. Patent No.: 6,301,668) in view of Jones et al. (U.S. Patent No.: 5,812,844). Still yet, the Examiner has rejected Claims 5-7 and 9-11 under 35 U.S.C. 103(a) as being unpatentable over Gleichauf et al. (U.S. Patent No.: 6,301,668) in view of Jones et al. (U.S. Patent No.: 5,812,844) in further view of Voight et al. (U.S. Patent No.: 5,623,598). Finally, the Examiner has rejected Claims 12, 13, 16, 19, and 23 under 35 U.S.C. 103(a) as being unpatentable over Gleichauf et al. (U.S. Patent No.: 6,301,668) in view of Jones et al. (U.S. Patent No.: 5,812,844) in further view of "Dr. Solomon's Anti-Virus Toolkit for Workstation," herein referred to as Solomon.

Applicant respectfully disagrees with rejections, especially in view of the amendments made hereinabove. Specifically, the subject matter of Claims 4-6 have been incorporated into each of the independent claims.

With respect to applicant's claimed "wherein suspending the running of the virus scanner comprises suspending the virus scanner for a suspend time period equal to the sampling period multiplied by one minus the maximum value" (see all independent claims), the Examiner states that he is "interpreting the scanner thread to be executed if a threshold has not exceeded (time period equal to the sampling period minus the suspend time period) in light of the combination..."

It appears that the Examiner has not taken into consideration the full weight of applicant's claims, since nowhere in the Examiner's proposed combination is there even a suggestion of applicant's claimed "a suspend time period equal to the sampling period multiplied by one minus the maximum value." Only applicant teaches and claims such a suspend time period, in the context of the remaining claim limitations, which is optimally suited for limiting processor usage.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the references, when combined, fail to teach or suggest all the claim limitations.

It is further noted that the Examiner's application of the prior art is further deficient with respect to the dependent claims. Just by way of example, the Examiner

relies primarily on the "Advanced Options" dialog on page 76 of Solomon to make a prior art showing of applicant's claimed "wherein defining a processor utilization value comprises displaying a dialog box on a screen of a computer to allow a user to select the utilization value." See Claim 13 et al.

Such dialog, however, fails to even suggest "wherein defining a processor utilization value comprises displaying a dialog box on a screen of a computer to allow a user to select the utilization value" (emphasis added).

Applicant further brings the Examiner's attention to applicant's added Claims 24-32, which include the following subject matter believed to be novel:

"wherein the dialog box on the screen includes a slider bar" (see Claim 24 et al.);

"wherein the dialog box on the screen includes a plurality of check boxes" (see Claim 25 et al.); and

"wherein the processor utilization value includes 33%" (see Claim 26 et al.).

A specific showing of each of the foregoing limitations or a notice of allowance is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. Applicants are enclosing a check to pay for the added claims. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P308_00.031.01).

Respectfully submitted,

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